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June 15, 2011
State of Arizona vs. James Arthur Ray
Cause No. V1300CR201080049

SANDRA K MARKHAM, Clerk
By: RHONDI HAGEN

FINAL INSTRUCTIONS TO THE JURY

1. Ladies and Gentlemen of the jury, you have now heard all the evidence in this case. This is the point in the case where I will tell you the law you are to follow in considering this case and reaching your decision. This is called instructing you on the law and you must follow the law as I give it to you. Please listen carefully to my instructions and don't try to take notes since you have all been given copies of these instructions which you will take to the jury room with you.
2. You must take into account all my instructions on the law. You are not to pick out one instruction or part of one and disregard the others. However, after you have determined the facts, you may find that some instructions do not apply. You must then consider the instructions that do apply and decide the case by applying those instructions to the facts as you have found them.
3. It is your duty as a juror to decide this case by applying these jury instructions to the facts as you determine them. You must follow these jury instructions. They are the rules you should use to decide this case.
 - A. It is your duty to determine what the facts are in the case by determining what actually happened. Determine the facts only from the evidence produced in court. When I say "evidence," I mean the testimony of witnesses and the exhibits introduced in court. You should not guess about any fact. You must not be influenced by sympathy or prejudice. You must not be concerned with any opinion that you feel I have about the facts. You, as jurors, are the sole judges of what happened.

B. Credibility of Witnesses:

In deciding the facts of this case, you should consider what testimony to accept, and what to reject. You may accept everything a witness says, or part of it, or none of it.

In evaluating testimony, you should use the tests for truthfulness that people use in determining matters of importance in everyday life, including such factors as: the witness's ability to see or hear or know the things the witness testified to; the quality of the witness's memory; the witness's manner while testifying; whether the witness had any motive, bias, or prejudice; whether the witness was contradicted by anything the witness said or wrote before trial; whether the witness was granted immunity by law enforcement; or by other evidence; and the reasonableness of the witness's testimony when considered in the light of the other evidence.

Consider all of the evidence in the light of reason, common sense, and experience.

C. Witness Prior Conviction:

You have heard evidence that a witness has previously been convicted of a criminal offense. You may consider this evidence only as it may affect the witness' believability.

D. Expert Witness:

A witness qualified as an expert by education or experience may state opinions on matters in that witness's field of expertise, and may also state reasons for those opinions.

Expert opinion testimony should be judged just as any other testimony. You are not bound by it. You may accept it or reject it, in whole or in part, and you should give it as much credibility and weight as you think it deserves, considering the witness's qualifications and experience, the reasons given for the opinions, and all the other evidence in the case.

E. Evidence to be Considered:

You are to determine what the facts in the case are from the evidence produced in Court. If the Court sustained an objection to a lawyer's question, you must disregard it and any answer

given. Any testimony stricken from the Court record must not be considered.

F. Lawyers' Comments Are Not Evidence:

In their opening statements and closing arguments, the lawyers talk to you about the law and the evidence. What the lawyers say is not evidence but it may help you to understand the law and the evidence.

G. Direct and Circumstantial Evidence:

Evidence may be direct or circumstantial. Direct evidence is the testimony of a witness who saw, heard, or otherwise observed an event. Circumstantial evidence is the proof of a fact or facts from which you may find another fact. The law makes no distinction between direct and circumstantial evidence. It is for you to determine the importance to be given to the evidence, regardless of whether it is direct or circumstantial.

H. Absence of Other Participant:

The only matter for you to determine is whether the State has proved the Defendant guilty beyond a reasonable doubt. The Defendant's guilt or innocence is not affected by the fact that another person or persons are not on trial now.

I. Testimony of Law Enforcement Officers:

The testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because of the fact that the witness is a law enforcement officer. You are to consider the testimony of a peace officer just as you would the testimony of any other witness.

4. I now want to instruct you on some general principles of law which you must apply to this case.

- A. **Indictment Is Not Evidence:**
The State has charged Mr. Ray with three counts of manslaughter. These charges are not evidence against the Defendant. You must not think that the Defendant is guilty just because of a charge. Mr. Ray has pled "not guilty." This plea of "not guilty" means that the State must prove each element of the charges beyond a reasonable doubt.
- B. **Separate Counts:**
Each count charges a separate and distinct offense. You must decide each count separately on the evidence with the law applicable to it, uninfluenced by your decision on any other count. You may find that the State has proved beyond a reasonable doubt, all, some, or none of the charged offenses. Your finding for each count must be stated in a separate verdict.
- C. **Evidence of Any Kind:**
The State must prove guilt beyond a reasonable doubt with its own evidence. Mr. Ray is not required to produce evidence of any kind. The decision on whether to produce any evidence is left to the Defendant acting with the advice of his attorney. The Defendant's failure to produce any evidence is not evidence of guilt.
- D. **Lost, Destroyed, or Unpreserved Evidence:**
If you find that the State has lost, destroyed, or failed to preserve evidence whose contents or quality are important to the issues in this case, then you should weigh the explanation, if any, given for the loss or unavailability of the evidence. If you find that any such explanation is inadequate, then you may draw an inference unfavorable to the State, which in itself may create a reasonable doubt as to the defendant's guilt.
- E. **Constitutional Right Not To Testify:**
The State must prove guilt beyond a reasonable doubt based on the evidence. A defendant in a criminal case has a constitutional right to not testify at trial, and the exercise of that right cannot be considered by the jury in determining whether a defendant is guilty or not guilty.

F. Presumption of Innocence-Reasonable Doubt:

The law does not require a defendant to prove innocence. Every defendant is presumed by law to be innocent. You must start with the presumption that the Defendant is innocent.

The State has the burden of proving Mr. Ray guilty beyond a reasonable doubt. This means the State must prove each element of each charge beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not true, or that its truth is highly probable. In criminal cases, such as this, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. There are very few things in this world that we know with absolute certainty and, in criminal cases, the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that Mr. Ray is guilty of the crimes charged, you must find him guilty. If, on the other hand, you think there is a real possibility that Mr. Ray is not guilty, you must give him the benefit of the doubt and find him not guilty.

G. Jury Not to Consider Penalty:

You must decide whether Mr. Ray is guilty or not guilty by determining what the facts in the case are and applying these jury instructions. You must not consider the possible punishment when deciding on guilt. Punishment is left to the judge.

H. First Amendment:

The First Amendment of the United States Constitution guarantees every citizen freedom of speech and religion. Thus, you must not be prejudiced or biased for or against Mr. Ray simply because you may or may not disagree or dislike the content of Mr. Ray's speech, religious and/or spiritual beliefs and ideas.

5. As I go through the balance of these instructions, I will be explaining elements of the charges to you. In addition, certain words or phrases will be defined for you. If I do not provide a definition or explanation of any particular word or phrase, you should apply the ordinary meaning of such word or phrase in reaching your decision.

A. **Stipulations:**

The lawyers are permitted to stipulate that certain facts exist. This means that both sides agree those facts do exist and are part of the evidence.

B. **Motive:**

The State need not prove motive, but you may consider motive or lack of motive in reaching your verdict.

6. **Manslaughter:**

The State of Arizona has charged Mr. Ray with three counts of manslaughter. The crime of manslaughter requires proof that the Defendant:

1. caused the death of another person; and
2. was aware of and showed a conscious disregard of a substantial and unjustifiable risk that his conduct would cause another person's death.

The risk must be such that disregarding it was a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

A. **Conduct Defined:**

"Conduct" means an act or omission and its accompanying culpable mental state.

B. **Voluntary Act Defined:**

"Voluntary act" means a bodily movement performed consciously and as a result of effort and determination.

C. **Omission Defined:**

"Omission" means the failure to perform an act as to which a duty of performance is imposed by law.

The only duty you may consider in this case is whether the Defendant has violated the manslaughter statutes, or if appropriate, negligent homicide statutes as defined in these instructions.

D. Lesser-Included Offense:

The crime of manslaughter includes the lesser offense of negligent homicide. You may consider the lesser offense of negligent homicide if either

1. you find the Defendant not guilty of manslaughter; or
2. after full and careful consideration of the facts, you cannot agree on whether to find the Defendant guilty or not guilty of manslaughter.

You cannot find the Defendant guilty of negligent homicide unless you find that the State has proved each element of negligent homicide beyond a reasonable doubt.

E. Negligent Homicide:

The crime of negligent homicide requires proof that the Defendant:

1. caused the death of another person; and
2. failed to recognize a substantial and unjustifiable risk that his conduct would cause the death of another person.

The risk must be such that the failure to perceive it is a gross deviation from what a reasonable person would observe in the situation.

The distinction between manslaughter and negligent homicide is this: for manslaughter the Defendant must have been aware of a substantial and unjustifiable risk and consciously disregarded the risk that his conduct would cause death. Negligent homicide requires that the Defendant failed to recognize a substantial and unjustifiable risk that his conduct would cause death.

If you determine that the Defendant is guilty of either manslaughter or negligent homicide but you have a reasonable doubt as to which it was, you must find the Defendant guilty of negligent homicide.

F. Criminal Negligence Defined:

"Criminal negligence" means, with respect to a result or a circumstance described by a statute defining an offense, that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

G. Included Mental States – Criminal Negligence:

If the State is required to prove that the Defendant acted "with criminal negligence," that requirement is satisfied if the State proves that the defendant acted "knowingly," or "recklessly."

H. Included Mental State – Recklessly:

If the State is required to prove that the Defendant acted "recklessly," that requirement is satisfied if the State proves that the Defendant acted "knowingly."

I. Knowingly Defined:

"Knowingly" means that a defendant acted with awareness of or belief in the existence of conduct or circumstances constituting an offense. It does not mean that a defendant must have known the conduct is forbidden by law.

J. Recklessly Defined:

"Recklessly" means that a defendant is aware of and consciously disregards a substantial and unjustifiable risk that his conduct will result in death. The risk must be such that disregarding it is a gross deviation from what a reasonable person would do in the situation.

K. Meaning of "Substantial and Unjustifiable" Risk:

In civil cases, a defendant can be liable if the risk of harm caused by his conduct is merely "unreasonable." In criminal cases the standard is higher. The risk of death must be "substantial and unjustifiable."

L. Meaning of "Gross Deviation":

A "gross deviation from the standard of conduct" is one that may be characterized by such terms, among others, as flagrant, extreme, outrageous, heinous or grievous. The deviation from reasonable conduct must be significantly greater than the mere inadvertence or heedlessness that is sufficient for civil negligence.

7. Causation Instruction – Superseding Intervening Event:

For conduct to be the cause of a result there must be proof beyond a reasonable doubt of all three of the following:

1. but for the conduct the result in question would not have occurred; and
2. the relationship between the conduct and result satisfies any additional causal requirements imposed by the definition of the offense. The additional causal requirements imposed by the definition of the offense are as follows:
 - a. for manslaughter, Mr. Ray must have engaged in the conduct with the mental state designated "recklessly;
 - b. for the lesser-included offense of negligent homicide, Mr. Ray must have engaged in the conduct with the mental state of "criminal negligence";

and

3. the conduct must be the proximate cause of the result.

The proximate cause of a death is a cause which, in natural and continuous sequence, produces death, and without which the death would not have occurred.

Proximate cause does not exist if the chain of natural effects and cause either (1) does not exist or (2) is broken by a

superseding intervening event that was unforeseeable by the Defendant and, with the benefit of hindsight, may be described as abnormal or extraordinary.

The State must prove beyond a reasonable doubt that a superseding intervening event did not cause the death.

8. **Causation Instruction -- Pre-existing Physical Condition:**
When a person causes death to another, the consequences are not excused, nor is the criminal responsibility for the resulting death lessened, by the pre-existing physical condition of the person killed.
9. **Causation Instruction – Multiple Actors:**
The unlawful acts of two or more people may combine to cause the death of another. If the unlawful act of the other person was the sole proximate cause of death, the Defendant's conduct was not a proximate cause of the death. If you find that the Defendant's conduct was not a proximate cause of the death, you must find the Defendant not guilty.
10. **Multiple Acts:**
Mr. Ray is accused of having committed the crimes of reckless manslaughter or negligent homicide in Counts 1, 2 and 3. The prosecution has introduced evidence seeking to prove that there is more than one act or omission upon which a conviction on Counts 1, 2 and 3 may be based. You may not find Mr. Ray guilty unless the proof shows beyond a reasonable doubt that he committed one or more of the acts or omissions alleged as to each count. Furthermore, in order to return a verdict of guilty as to any of the counts, all twelve jurors must agree that Mr. Ray committed the same act or omission with the accompanying culpable mental state.
11. **Closing Instruction:**
The case is now submitted to you for decision. You are to discuss the case and deliberate only when all jurors are together in the jury room. You are not to discuss the case with each other or anyone else during breaks or recesses. The admonition I have given you during the trial remains in effect when all of you are not in the jury room deliberating. After setting your schedule, I suggest that you next review the written jury instructions and verdict forms. It may be

helpful for you to discuss the instructions and verdict forms to make sure that you understand them. Again, during your deliberations you must follow the instructions and refer to them to answer any questions about applicable law, procedure and definitions.

All twelve of you must agree on a verdict on each count you consider. All twelve of you must agree whether the verdict is guilty, or not guilty. When you go to the jury room, you will choose a foreman who will be in charge during your deliberations and who will sign any verdict that you reach.

You will be given three forms of verdict on which you will indicate your decision.

The verdict forms read as follows: